

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6191**

**BILL NUMBER: SB 78**

**NOTE PREPARED: Jan 24, 2008**

**BILL AMENDED: Jan 22, 2008**

**SUBJECT:** Probate and Trust Matters.

**FIRST AUTHOR:** Sen. Zakas

**FIRST SPONSOR:** Rep. VanHaaften

**BILL STATUS:** As Passed Senate

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** *Property Tax Benefits for Trusts:* The bill specifies that a qualified personal residence trust is entitled to certain property tax deductions and the homestead credit during the period in which the grantor of the trust is entitled to occupy the residence rent-free under the terms of the trust and is otherwise eligible for the deduction or credit.

*Access to Safe Deposit Boxes:* The bill establishes procedures for obtaining access to a safe deposit box following the death of the individual leasing the safe deposit box.

*Delegation of Powers by Parent or Guardian:* The bill extends to 12 months the period for which a parent of a minor or a guardian of a protected person can delegate by properly executing a power of attorney certain powers concerning the support, custody, or property of the minor or protected person. It also removes the requirement that the parent or guardian be incapacitated or absent during the period in which the delegated powers are conferred upon the attorney in fact.

*Abatement of Beneficiary Interests:* The bill specifies the order in which beneficiary interests in a trust must be abated if the trust property is insufficient to fully satisfy the interests of all beneficiaries.

*Power of Attorney Requirements:* The bill permits a power of attorney to be signed at the principal's direction. (Current law requires a power of attorney to be signed by the principal to be valid.)

(The introduced version of this bill was prepared by the Probate Code Study Commission.)

**Effective Date:** Upon passage; July 1, 2008.

### **Explanation of State Expenditures:**

**Explanation of State Revenues:** (Revised) *Property Tax Benefits for Trusts* - The state levies a small tax rate for the State Fair and State Forestry that applies to all assessed value (AV). If property is not a part of the tax base, the state cannot assess this tax on the property. Any decrease in the AV base resulting from additional aged, blind/disabled, and veterans deductions granted due to this bill would decrease the property tax revenue for these two funds. However, the potential revenue loss due to the bill is indeterminable.

*Access to Safe Deposit Boxes* - The bill could potentially result in additional court fees to the state General Fund, the Judicial Branch Insurance Adjustment Account, and the State User Fee Fund. However, the extent of this impact is indeterminable and would depend on the additional court actions occurring as a result of requests for access to a decedent's safe deposit box.

The bill provides that a financial institution is liable to a decedent's estate or to an individual entitled to access the decedent's safe deposit box under the provisions of the bill, if the financial institution: (1) is presented with a request for access by the authorized individual; and (2) refuses to allow access to the safe deposit box within three business days of being presented with an appropriate request for access. However, if the financial institution requires a locksmith or other contractor to gain access to the safe deposit box, the bill provides the financial institution five additional business days to comply with the access requirements.

A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the revenue from the judicial salaries fee (\$17), the public defense administration fee (\$3), and the court administration fee (\$3) is distributed to the state General Fund. Also, the judicial insurance adjustment fee (\$1) is distributed to the Judicial Branch Insurance Adjustment Account, and the automated record keeping fee (\$7) is distributed to the State User Fee Fund.

### **Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Property Tax Benefits for Trusts* - The bill could potentially lead to additional aged, blind/disabled, and veterans deductions being granted. However, the total amount of these additional deductions is indeterminable. The additional deductions would serve to shift part of the property tax burden from the taxpayers receiving the deduction to all taxpayers in the form of an increased tax rate.

The bill provides that a trust is entitled to the aged, blind/disabled, and veterans property tax deductions for real property it owns, provided the property is occupied by an individual and the county auditor determines that the individual: (1) has a right to occupy the real property rent-free under the terms of a qualified personal residence trust created by the individual under U.S. Treasury regulations; (2) otherwise qualifies for the deductions; and (3) would be considered the owner of the property under the property tax law.

*Access to Safe Deposit Boxes* - The bill could potentially result in additional court fees to local governments. However, the extent of this impact is indeterminable and would depend on the additional court actions occurring as a result of requests for access to a decedent's safe deposit box.

If additional civil actions result from the bill, local governments receive revenue from the following sources. The county general fund receives 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the revenue from the civil costs fee. If the case is filed in a city or town

court, 20% of the revenue from the civil costs fee is deposited in the county general fund and 25% is deposited in the city or town general fund. In addition, the document storage fee (\$2) is distributed to the Clerk's Record Perpetuation Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** Department of Local Government Finance.

**Local Agencies Affected:** Trial courts; Counties, cities, and towns; County auditors.

**Information Sources:**

**Fiscal Analyst:** Jim Landers, 317-232-9869.